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RECENT ENGLISH DECISIONS.

Court of Exchequer, November 16, 1852.

LAVARONI *v.* DRURY.

1. Where goods put on board a ship to be carried by sea, for hire, under a bill of lading which contains only the usual exception, viz., "the act of God, the Queen's enemies, fire, and all other dangers and accidents of the seas, rivers and navigation, &c., excepted," are damaged by rats during the voyage, it is no defence to an action by the owner of the goods that the master had kept cats on board.
2. *Seemle*, it would be a defence that rats had made a hole in the ship through which water came in and injured the goods.

Crowder, on the 8th November, moved for a new trial, on the ground of misdirection by Martin, B., before whom this case was tried. The nature and facts of it appear in the judgment. *Cur. adv. vult.*

The judgment of the Court—consisting of POLLOCK, C. B., ALDERSON, PLATT and MARTIN, BB.—was now delivered by

POLLOCK, C. B.—We took time to consider this case, not because we entertained much doubt on the subject of it, but in consequence of Mr. Crowder's having cited several foreign authorities adverse to the opinion we have formed, namely, that there ought to be no rule.

This was an application for a new trial, made by Mr. Crowder on behalf of the defendants, on the ground of misdirection.

The cause was tried before my Brother Martin at the first sittings in this term, when a verdict was found for the plaintiff.

The declaration was in the ordinary form by the plaintiff, the owner of goods, against the defendants, who were ship-owners, for damages alleged to have occurred by the negligence of the defendants, owners of the ship *Anne Sophia*, to some Parmesan cheese, the property of the plaintiff, on a voyage from Genoa to London.

In the month of December, 1851, the *Anne Sophia* was at Genoa, taking in cargo as a general ship, and the cheese in question was

loaded on board, and three bills of lading signed by the master in respect of them. The bills of lading were in the Italian language, and all substantially in the same form; and by their terms, the master purported to bind himself absolutely to deliver the cheese safe and free from damage in London. He, however, was examined at the trial, and stated that he was ignorant of Italian, and that before he signed the bills they were read to him by the broker, as if the ordinary exception contained in the English bills of lading was contained in and was part of them, and that he signed them under the belief, and on the understanding that they were in the ordinary English form. For the purpose of the present question, it is to be considered that they were in such form: for the direction which is complained of was founded upon the supposition that the exception above referred to was contained in the bill of lading, and that the plaintiff was bound by it. The ship sailed, and arrived in London: but several of the cheeses, as it was found by the jury, were eaten and damaged by rats in the course of the voyage. It was proved by the master that he had two cats on board; and it was insisted by the learned counsel for the defendants that it was a question for the jury, whether the defendants had not, by keeping the cats, excused or relieved themselves from the charge of negligence alleged against them. The learned judge, however, was of opinion, that this was not a question for a jury; and he directed them that damage by rats was not within the exception contained in the English bill of lading, and that if they believed that the cheese had been eaten and damaged by rats, in the course of the voyage, the defendants were responsible to the plaintiff.

We are of opinion that this direction was right.

By the law of England the master and owner of a general ship are common carriers for hire, and responsible as such. This, according to the well-known rule, renders them liable for every damage which occurs during the voyage, except that caused by the act of God or the Queen's enemies. They, however, almost universally receive goods under bills of lading signed by the master, and in such case the liability depends upon and is governed by the terms of the bill of lading, it being the express contract between the

parties—the owner of the goods on the one hand, and the master and owner of the ship on the other.

The exception contained in the English bill of lading, which is to be assumed to be in the bills of lading in the present case, will be found in Abb. Ship. 322, 8th ed., and is as follows: “The act of God, the Queen’s enemies, fire, and all and every other dangers and accidents of the seas, rivers and navigation, of whatever nature and kind soever, save risk of boats, so far as ships are liable thereto, excepted.” We agree with the learned judge that the true question is whether damage by rats falls within this exception, and we are clearly of opinion that it does not. The only part of the exception under which it possibly could be contended to fall is as “a danger or accident of the sea and navigation:” but this, we think, includes only a danger or accident of the sea or navigation properly so called, viz., one caused by the violence of the wind and waves (a vis major) acting upon a seaworthy and substantial ship; and does not cover damage by rats, which is a kind of destruction not peculiar to the sea or navigation, or arising directly from it, but one to which such a commodity as cheese is equally liable in a warehouse on land as in a ship at sea.

In moving for the rule the learned counsel for the defendants cited various foreign writers of great eminence and authority—Emerigon, vol. 1, pp. 375, 376; Consolato del Mare, cc. 65, 66; Rocceus, de Navibus, Not. 58; and Story on Bailments, § 513. The foreign authorities first above mentioned lay down the rule distinctly, that a ship’s master who keeps cats is excused from damage by rats: but however eminent their authority, and however worthy of attention and consideration their works are, we cannot act upon them in contradiction to the plain and clear meaning of the words of the bill of lading, which is the contract between the parties. As to Mr. Justice Story, he very carefully confines himself to stating that such are the foreign authorities, and, as it seems to us, avoids expressing his own opinion upon the point. He cites a case in the Court of Pennsylvania, where damage by rats was held to be a peril of the sea; *Garrigues v. Cox*, 1 Binn. 592; but he also refers to

another case, *Aymer v. Astor*, 6 Cowen, 266, and to 3 Kent's Com. 301, where the contrary is stated to be the law.

It was strongly insisted that the same doctrine was laid down by Lord Tenterden in his book on Shipping, p. 371; and there is no doubt that any opinion coming from him is entitled to the greatest weight and consideration. We do not, however, think Lord Tenterden can be understood as laying down such a rule. He cites the passage from *Roccus*, which states that keeping cats on board excuses the shipowner from damage by mice, but immediately after states this to be merely an illustration of the general principle, by which masters and owners are held responsible for every injury that might have been prevented by human foresight or care. Now, whatever might have been the case when *Roccus* wrote, we cannot but think that rats might be now banished from a ship by no very extraordinary degree of diligence on the part of the master. And we further are very strongly inclined to believe, that in the present mode of stowing cargoes, cats would offer a very slight protection, if any, against rats—it is difficult to understand how, in a full ship, a cat could get at a rat in the hold at all, or at least with the slightest chance of catching it. But Lord Tenterden cannot be understood as contended for by the learned counsel for the defendants in the present case, is evident from the authority which he cites for his view of the law. *Dale v. Hall*, 1 Wils. 281. That was an action against a ship-master who carried goods for hire. It was contended for the defendant, at the trial, that the plaintiff had proved no negligence, and it was proposed to prove that the defendant had taken all possible care of the goods, and that the damage accrued by rats having made a leak in the vessel, whereby water was admitted, and that thereupon everything possible was done to pump out the water and prevent the damage which happened. The evidence was admitted, and the defendant obtained a verdict. A new trial was moved for on the ground that the evidence was not legally admissible, and the rule was made absolute. The Chief Justice stated that the evidence ought not to have been received, that everything was negligence in a carrier or hoyman that the law does not excuse; that he was answerable for goods the

instant he received them, and *in all events*, except they happened to be damaged by the act of God or of the King's enemies.

This is the case stated by Lord Tenterden in the part of his book above referred to, as one, indeed the principal authority upon the subject; and we entirely concur in it, and it seems to us conclusive in the present case. In our opinion, the application of the principle laid down in this case affords the only true rule for ascertaining with accuracy and certainty the liability of the master and owner of a general ship: viz., that *prima facie* he is a common carrier, but that his responsibility may be either enlarged or qualified by the terms of the bill of lading, if there be one, and that the question whether the defendant is liable or not, is to be ascertained by the terms of this document when it exists. There will therefore be no rule.

After this judgment had been pronounced.

POLLOCK, C. B., said—If, indeed, the rats had made a hole in the ship through which water came in and damaged the cargo, that might very likely be a case of sea damage. And

ALDERSON, B., added—Our judgment does not touch that question. A rat making a hole in the ship may be the same thing as if a sailor made one.

Rule refused.

ABSTRACTS OF RECENT AMERICAN CASES.

New York Court of Appeals, October, 1852.

Agent—Liability of Principal.—Where the plaintiff and defendants were owners of separate parcels of grain which were stored with the same warehouseman, such warehouseman, in delivering the grain, acted as the agent of the owner who directed the delivery,—and such owner was responsible for his acts in regard to such delivery. *Cobb v. Dows*. Opinion by GARDINER, J.

So that when the defendants gave an order on the warehouseman to deliver their grain, and by mistake or otherwise he delivered the plain-